

ESTTA Tracking number: **ESTTA103412**

Filing date: **10/10/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91172570
Party	Defendant Winnett, Russell Winnett, Russell Russell Winnett 14670 Rory Calhoun Dr. Arizona City, AZ 85223
Correspondence Address	Winnett, Russell Russell Winnett 14670 Rory Calhoun Dr. Arizona City Arizona 85223 United States,
Submission	Answer
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Date	10/10/2006
Attachments	Winnett Answer.pdf (4 pages)(24599 bytes)

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“CUSTOM AUTOMATED PRODUCTS” to be used by Opposer while they were at R & M Supply; however, Applicant denies the remaining allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant is without knowledge as to the truth of the allegations in Paragraph 9 of the Notice of Opposition and, therefore, denies those allegations.

10. Applicant is without knowledge as to the truth of the allegations in Paragraph 10 of the Notice of Opposition and, therefore, denies those allegations.

11. Applicant admits that some consumer confusion may exist, but that any confusion that exists between Applicant’s mark and Opposer’s use of a confusingly similar mark is because Opposer refuses to cease use of the mark to which Applicant has superior rights; and, as to the remaining allegations of Paragraph 11 of the Notice of Opposition, Applicant is without knowledge as to the truth of these allegations and, therefore, denies those allegations.

12. Applicant denies that Opposer has any superior trademark rights, as Opposer did not begin to exist until five (5) years after Applicant began using Applicant’s mark; and, as to the remaining allegations in Paragraph 12 of the Notice of Opposition, Applicant is without knowledge as to the truth of the allegations and, therefore, denies those allegations.

13. Applicant is without knowledge as to the truth of the allegations in Paragraph 13 of the Notice of Opposition and, therefore, denies those allegations.

14. Each and every allegation of the Notice of Opposition herein not specifically admitted above is hereby expressly denied.

AFFIRMATIVE DEFENSES

15. By way of affirmative defense, Applicant states that he has senior rights to use the

mark "C.A.P." and "CUSTOM AUTOMATED PRODUCTS" and that Applicant never abandoned his rights to use the mark on the relevant products.

16. By way of affirmative defense, Applicant states that Opposer has made wrongful threats and accusations against Applicant, some or all of which have involved Opposer's claims as to Opposer's rights in the designation "C.A.P. CUSTOM AUTOMATED PRODUCTS."

17. By way of affirmative defense, Applicant states that Opposer has engaged in unlawful, unfair and anticompetitive trade practices, some or all of which have involved Opposer's claims as to Opposer's rights in the designation "C.A.P. CUSTOM AUTOMATED PRODUCTS."

18. By way of affirmative defense, Applicant pleads unclean hands and otherwise inequitable conduct in Opposer's use of Opposer's rights in the designations "C.A.P." and "CUSTOM AUTOMATED PRODUCTS."

19. Applicant reserves the right to, and intends to, rely upon any and all other defenses properly provable under the facts herein as or after such defenses become known to it, whether or not specifically pleaded above, including but not limited to the defenses of abandonment, laches, estoppel, fraud, mistake, prior judgment, and any other matter which is or may become the basis of issue herein.

WHEREFORE, having fully answered the Notice of Opposition herein, Applicant respectfully requests that same be dismissed in its entirety and that its application Serial No. 78/480,984 proceed to registration.

Respectfully submitted,

LITMAN LAW OFFICES, LTD.

Date: October 10, 2006

By: /s/ Vincent M. Amberly
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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was mailed by first class mail, postage prepaid, and a copy was sent via electronic mail to counsel for Opposer, Elise Tenen-Aoki, Esq., Greenberg Traurig, LLP, 2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404, on this 10th day of October, 2006.

/s/ Vincent M. Amberly

Vincent M. Amberly